

Appl. No. 10/736,282
Docket No. AA556C
Amdt. dated February 9, 2007
Reply to Office Action mailed on January 18, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 18 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102(b) Over Nakahata

Claims 1 – 18 have been rejected under 35 U.S.C. 102(b) as being anticipated by Nakahata, *et al.*, (U.S. Patent No. 5,873,868, hereinafter “Nakahata”). Applicants respectfully traverse the rejection.

It is well settled that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Applicants assert that Nakahata does not teach each and every of claim 1 of the present application. Specifically, Nakahata does not teach a chassis layer including a plurality of spaced discontinuities regularly disposed in at least a portion of the first or second waist panel such that when the waist panel is subject to tension the discontinuities provide openings that extend through the chassis layer thereby providing the chassis layer with extensibility in the transverse direction, as recited in claim 1 of the present application.

The Office Action states

Nakahata teaches . . . [a] chassis layer 22 including a plurality of spaced discontinuities 206 regularly disposed in at least a portion of the first or second waist panel 46, 44 such that when the waist panel is subject to tension the discontinuities 206 provide openings that extend through the chassis layer thereby providing the chassis layer 22 with extensibility in the transverse direction . . .

(The Office Action, bottom of page 23 to top of page 3). Applicants must respectfully disagree with the Office’s interpretation of the scope of the Nakahata disclosure.

As best understood by Applicants, Nakahata is directed to “[a] topsheet including a plurality of spaced discontinuities . . . to enable solid and semi-solid fecal materials to pass through the topsheet to the absorbent core [and] upon removal of the article from the

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wearer the topsheet openings close to substantially conceal the fecal material.” (Nakahata, col. 1, line 65 – col. 2, line 6). Applicants respectfully submit that the openings in the topsheet of Nakahata are not the same as the openings that extend through the chassis layer thereby providing the chassis layer with extensibility in the transverse direction recited in the present claims.

Applicants appreciate that Nakahata discloses that “[t]he chassis 22 comprises at least a portion of the absorbent core 28 and preferably an outer covering layer including the topsheet 24 and the backsheet 26.” (Nakahata, col. 3, lines 32 – 35). However, simply because Nakahata uses the term “chassis” does not necessarily mean it describes a chassis as recited in claim 1 of the present application. Case law clearly states that “[the] meaning of words used in a claim is not construed in a ‘lexicographic vacuum, but in the context of the specification and drawings.’” (*Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).

The present application states “[t]he main body 25 comprises a liquid pervious topsheet 24; an absorbent core 28 disposed underneath the liquid pervious topsheet 24; and a chassis layer 21 (refer to Figure 3).” (The present application, page 4, lines 26 – 27). Applicants would like to point out that the chassis layer and the topsheet are clearly disclosed as separate elements. Additionally, when viewed in light of the drawings and the specification of the present application, it is Applicants’ position that one of ordinary skill in the art would understand that the chassis layer, as recited in claim 1 of the present application, does not include the topsheet. (See generally the present application, page 5 line 29 – page 7, line 14 and figure 3).

Even if Nakahata did teach a chassis layer as recited in claim 1 of the present application, Applicants are still unaware of any teaching in Nakahata of openings extending through the chassis layer. As best understood by Applicants, Nakahata discloses openings that extend through the topsheet only. If, as the Office Action asserts, Nakahata teaches openings extending through the chassis layer, then the openings must also extend through the absorbent core and the backsheet of the Nakahata absorbent article. Applicant is unable to find any such teaching. Additionally, Applicants would

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like to point out that if Nakahata disclosed a chassis having openings therethru (*i.e.*, openings extending through the topsheet, the backsheet and the absorbent core) then the ability of the absorbent article to absorb and retain bodily liquids may be compromised and the absorbent article may not function as intended.

In light of the above remarks, it is Applicants' position that Nakahata does not teach each and every element of claim 1 or the claims that depend therefrom. Accordingly, Applicants respectfully request that the rejection of claims 1 – 18 under 35 U.S.C. §102(b) over Nakahata be reconsidered and withdrawn.

Rejection Under 35 USC §103(a) Over Nakahata

Claim 3 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Nakahata. Applicants respectfully traverse the rejection.

For the sake of brevity, Applicants assert that the remarks made above with regard to the rejection under 35 U.S.C. §102(b) are equally applicable to the rejection of claim 3 under 35 U.S.C. 103(a). Specifically, that Nakahata does not teach or suggest a chassis layer including a plurality of spaced discontinuities that provide openings that extend through the chassis layer thereby providing the chassis layer with extensibility in the transverse direction, as recited in the present claims. Applicants would like to point out again that the openings in the topsheet of Nakahata are not the same as the openings that extend through the chassis layer recited in the claim 1 of the present application. Accordingly, Applicants respectfully request that the rejection of claim 3 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. Applicant respectfully requests that the rejection of the claims be reconsidered in light of the

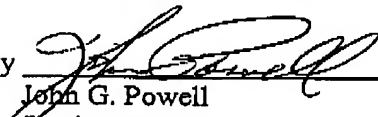
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arguments set forth herein and that claims 1 – 18 be allowed. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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